IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 29797 of 2007(V)

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PETITIONERS:

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1. K.S.ANIL KUMAR,
   S/O SUGATHAN, KADAVATH HOUSE,
   KEDAMANGALAM, N.PARUR.

2. M.P.DAVIS, S/O POULOSE,
   MOOLAN HOUSE, THEKKUMPURAM,
   CHENDAMANGALAM P.O.,
   NEAR THANTHONIKULAM.

BY ADV. SRI.KMV.PANDALAI

RESPONDENT:

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ASSISTANT LABOUR OFFICER,
N.PARUR.

BY SR.GOVT.PLEADER SRI.T.T.MAHAMOOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**S. SIRI JAGAN, J.**

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**WP(C) No. 29797 of 2007 - V**

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**Dated this the 9th day of October, 2007**

**J U D G M E N T**

The petitioners in this writ petition claim to be attached workers of M/s.Chorappilly Traders, 11/117(1), Perumpadanna, Near Prabhus Theatre, Infant Jesus Road, N.Parur of which one Sani Thomas was the Proprietor. The petitioners claim that they are regular employees of the said employer employed for loading and unloading cement in the business premises of the said employer. Since the said premises is in an area covered by the Head Load Workers Scheme, the petitioners filed separate applications in the prescribed form for registration under Rule 26A of the Kerala Headload Workers Rules (for short 'the Rules'). Applications were submitted on 20.8.2006. Pursuant thereto, the respondent, the Assistant Labour Officer issued notice to the employer as contemplated under sub-Rule(2) of Rule 26Aof the Rules on 23.10.2006 calling for his objections. However, so far even after more than almost a year, no action has been taken by the

respondent in respect of the applications submitted by the petitioners is the complaint raised by the petitioners in this writ petition.

2. The petitioners further submit that in view of the problems created by certain organised unions of the headload workers of the area, the employer approached this Court by filing W.P(C) No.2509 of 2007 for police protection for conducting the loading and unloading work in the employer's premises employing the petitioners as headload workers. The said writ petition was disposed of by this Court on 13.8.2007 granting time up to 13.10.2007 for getting registration of the petitioners under Rule 26A of the Rules. The time would expire on 13.10.2007. Therefore, the petitioners seek a direction to the respondent to complete the proceedings under Rule 26A of the Rules before that date.

3. The Government Pleader, on instructions, submits that further proceedings could not be taken only because the employer had not produced the wage register and employment register to prove that the

petitioners are the workers of the said employer. In this connection, the learned Government Pleader points out clause 4 of the Headload Worker (Attached Branch) Welfare Fund Scheme, 1995 wherein the eligibility conditions for enrolment in the scheme have been laid down. He would point out that as per the same, the employer is liable to produce the employment register and that is why the respondent has insisted on production of the wage register for the purpose of registration under Rule 26A of the Rules.

4. Counsel for the petitioners points out that the registration under Section 26A is to be done as per the procedure prescribed in Rule 26A itself which does not contemplate any production of any employment register by the employer at all. What is contemplated therein is only a notice to the employer inviting his objections. He points out that the reference by the Government Pleader to the Headload Worker (Attached Branch) Welfare Fund Scheme, 1995 is misplaced since the procedure prescribed therein is for the purpose of enrolment in

that scheme and not for the purpose of registration under Rule 26A.

5. I have considered the rival contentions in detail. The procedure for registration under Rule 26a is stipulated in rule itself which reads as follows:-

> "**26A. Registration of Headload Workers**:-
> (1)(Any headload worker may) submit his application for registration in Form IX to the Registering Authority concerned, with as many additional copies as there are employers or contractors from whom he claims to work.
> (2) On receipt of such application the Registering Authority shall issue notice in Form X to the employers or contractors from whom the headload worker claims work, with copy of the application inviting objections, if any, on such application.
> (3) After considering the objections, if any, received and after giving an opportunity of being heard, the Registering Authority shall register the name of the headload worker in the Register of Headload Workers, on being satisfied that the headload worker is eligible for registration and communicate the fact to the parties within two weeks of such registration. The Registering Authority shall also issue identity card to the registered headload worker (in Form XI). If the name is not registered, the Registering Authority shall

communicate the fact to the applicant with reasons therefor.

(3A) Where the identity card of registration granted to a headload worker under Sub-r.(3) is defaced or accidently lost or irrecoverably destroyed, he shall apply for a duplicate identity card along with two copies of recent photograph and a fine of Rs.25/-(Rupees twenty five only) to the Registering Authority concerned. The Registering authority may after making necessary enquiries and satisfying himself of the genuineness, issue a duplicate identity card)

(4. The registration of the persons as headload worker may be cancelled by (the Deputy Labour Officer or the District Labour Officer concerned or where there is no post of Deputy Labour Officer in that District Labour Office, by the Asst. Labour Officer Grade I) after satisfying himself on a report from Registering Authority that the Registration has been obtained by fraud or mistake:

Provided that not less than one months' previous notice in writing specifying the ground on which the registration is proposed to be cancelled shall be given by the authority empowered to cancel the registration to the headload worker, before the registration is cancelled.]"

Therefore, what is contemplated under Rule 26a is a

notice to the employer or contractor inviting objections, meaning thereby if the employer has no objection, there cannot be any impediment in registering the workers.

6. As pointed out by learned counsel for the petitioners, the reference of the learned Government Pleader to the scheme is not relevant for the purpose at all since registration has to be done in accordance with the procedure prescribed under Rule 26A.

7. In view of the fact that this Court had granted time up to 13.10.2007 only for getting registration, it is necessary that the respondents pass orders on the applications filed by the petitioners before that date, especially since the applications have been submitted by the petitioners as early as on 20.8.2006. It is unfortunately that even after a year, the respondent has not taken any concrete steps. Of course, the learned Government Pleader explains the delay by quoting some administrative difficulties. I am not going into that now. In view of the urgency of the matter, I direct the respondent to complete the formalities regarding the

registration. If the petitioners present themselves on 11.10.2007 along with their employer before the Assistant Labour Officer with a certificate signed by the employer that the petitioners are regular employees doing regular headload work in his establishment, the respondents shall complete the formalities before 13.10.2007

This writ petition is disposed of as above.

**S. SIRI JAGAN,**
**Judge**

Mbs/

**S.SIRI JAGAN, J.**

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O.P.NO. OF 2001

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J U D G M E N T

DATED: -0-2007